

Navigating FINTRAC Penalties - No Harm, No Foul

Examinations are one of the main activities the Financial Transactions and Reports Analysis Centre of Canada (“**FINTRAC**”) uses to assess whether businesses are effectively implementing and maintaining a compliance program. Depending upon the outcome of the assessment, FINTRAC may decide:

- to take no further action;
- to conduct follow-up compliance activities;
- to issue an administrative monetary penalty (“**AMP**”) to encourage a change in behaviour; or
- to disclose relevant information to law enforcement for investigation and prosecution of non-compliance offences under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (“**PCMLTFA**” or the “**Act**”) and its regulations.

It is important for reporting entities to understand that AMPs are not an automatic response to non-compliance. FINTRAC’s enforcement measures are not intended to be punitive, but rather to encourage a change in compliance behaviour.

Harm done assessment

According to section 73.11 of the Act, when deciding whether a penalty should be considered, FINTRAC assesses the “harm done” by a violation by reviewing various factors. FINTRAC considers the nature, relative importance, extent, and root cause of the non-compliance, mitigating or aggravating factors, and the business’s history of compliance.

FINTRAC defines “harm” as the degree to which a violation interferes with achieving the objectives of the Act or with FINTRAC’s ability to carry out its mandate. This means that the outcome of every violation has the ability to significantly impact and inhibit Canada’s efforts to prevent money laundering and terrorist financing activity.

The AMP regulations categorize violations by degree of importance, that is, the degree to which the non-compliance interferes with the purpose of the Act and/or FINTRAC’s mandate. They also define the minimum and maximum penalty amounts for each level.

When evaluating the harm done by a violation, FINTRAC considers both the potential and the resulting harm. “Resulting harm” means separate violations that are the result of the original violation. For example, if a business’ compliance policies and procedures do not address how to report large virtual currency transactions (“**LVCT**”), the resulting harm is the unreported LVCTs.

The first step that FINTRAC takes to assess the harm done when calculating a penalty amount is to determine whether the reporting entity has failed to meet a requirement completely or partially. This determination might be apparent in some instances; either the requirement was *met* or *not met*. For example, if a suspicious transaction report (“**STR**”) was not submitted where there were reasonable grounds to suspect that transactions were related to a money laundering offence, the requirement is *not met*. However, in other instances, the answer may not be obvious and may require further analysis. For example, if the policies and procedures do not sufficiently cover the requirements related to ongoing monitoring of business relationships, the requirement is *met in part*.

When a reporting entity has completely failed to meet a requirement, the base penalty amount that is normally considered for that violation is the maximum amount set out by the regulations. The reason being that complete failure to meet a requirement causes the maximum hindrance in achieving the objectives of the Act and FINTRAC's mandate.

When a reporting entity has failed to meet part of a requirement, the base penalty amount determined for each violation depends on the part that is non-compliant and the extent of the failure. FINTRAC evaluates the extent of the failure using assessment criteria that have been established based on the level of interference with achieving the objectives of the Act and FINTRAC's mandate.

Staying out of harm's way

Now that you know what harm is and how it can negatively impact your business as well as the country's efforts to combat money laundering and terrorist activity financing, we recommend you make efforts to stay out of harm's way. FINTRAC offers [guides](#) that discuss how it approaches the harm done criterion and the base penalty amount for violations under the Act and its regulations.

This is the first post in a weekly series that details FINTRAC's assessment of "harm done" when determining penalties for violations under the PCMLTFA and its regulations. Each subsequent post in the series will provide a breakdown of the harm done by a violation and the penalty calculation in relation to that violation. Stay tuned for the next post in this series.

We understand the challenges that come with preparing for a FINTRAC examination. If FINTRAC has scheduled an examination with your entity, and you need assistance preparing for it, please visit our website at [The AML Shop](#) or email: Contactus@theamlshop.ca.